

*United States Court of Appeals
for the Second Circuit*



**INTERVENOR'S
BRIEF**

Docket **75-7254**
No.

IN THE
United States Court of Appeals
For the Second Circuit

THE STATE OF NEW YORK,

Plaintiff-Appellant,

—against—

DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK, DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name John being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE", "RICHARD ROE", "RITA ROE", "GERALD GOE", "JANE COE", "SAM FOE", "GLADYS HOE", "AL JOE", "JANE DOE", "SUE WOE", "PETER MOE", "PHILIP SOE", "CAROL ZOE", "DONALD POE", "FRED MOL", "BOB BOE", "WARREN KOE", "BILL VOE", and "JOE WOE", true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County.

Defendants-Appellees.

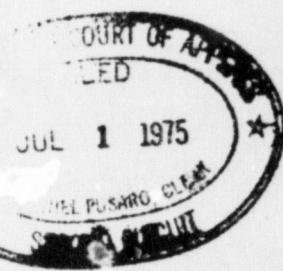
**BRIEF OF DOUGLAS L. BENNETT, BONNIE I.
BENNETT and BIG MOOSE PROPERTY OWNERS
ASSOCIATION, APPLICANTS FOR INTERVENTION-
APPELLANTS**

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BRIEF OF DOUGLAS L. BENNETT, BONNIE L.
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APPELLANTS

STATEMENT OF FACT

Douglas L. Bennett and Bonnie L. Bennett, residents of the State of New York and Big Moose Property Owners Association, a not-for-profit corporation of the State of New York, hereinafter referred to as "applicants" have sought permission to intervene in the original action above-captioned. In the prayer for relief of their proposed complaint, applicants sought not only the relief requested by the plaintiff State of New York in its original complaint, but also temporary and permanent injunctive relief restraining the defendants and "all other persons similarly situate and/or their successors and assigns" from interfering with the rights of applicants under certain affirmative covenants mutually pertaining to the lands seized and occupied by defendants and the lands of applicants. The relief requested also included the issuance of a writ of mandamus directing plaintiff and its officers to remove the defendants and other persons from the premises in question, as well as money damages to applicants.

In paragraphs 9(53), 11(53), 12(54), 16(55), 20(56), 21(57) and 23(57), the complaint is addressed to the "defendants, +heir invitees, followers, supporters, successors and assigns", the identity of the latter being then unknown to applicants. (The figures in parentheses refer to page numbers of the record.)

There appears in the Ganienkeh Manifesto, Exhibit 2 to the complaint (16), the document issued by the named defendants and other occupants of the Moss Lake Tract when they seized possession of the premises on May 13, 1974, the following statement:

"The Mohawk Nation, supported by traditional North American aboriginal natives from other native nations such as Ojibways, Crees, Algonquin and others shall move into the Mohawk homeland of Ganienkeh (16)."

Applicants request the Court to take judicial notice that North American aboriginal natives from other native nations were not and are not residents of the State of New York. In referring to the "invitees, followers, supporters, successors and assigns" of the defendants, the complaint was addressed and speaking to these non-resident occupants of the Tract.

The motion for applicants for intervention was opposed by the defendants and the affidavit of Hamilton S. White, commencing at page 100 of the record, was submitted in support of the application. Paragraph 7(103) stated:

"In May 1974 your deponent observed that most of the vehicles operated by the occupants bore Province of Quebec registrations and that the money used by them in purchasing groceries was Canadian. He was advised and verily believes that the occupants came from Canada."

This statement was never denied.

STATEMENT OF LAW

There appear in the complaint of the applicants and further in the record on appeal, grounds for jurisdiction of the District Court, to wit: diversity of citizenship. 28 UCC 1332(2).

This Court has the authority to direct the amendment of the original complaint and, if deemed necessary, the complaint of applicants to spell out the jurisdiction under §1332(2). Norton v. Larney, 266 J.S. 511, 515, 516, 45 S.Ct. 145, 147.

Also, applicants submit that jurisdiction for the original suit lies in the fact that under the Ganienkeh Manifesto, the exhibit of the complaint, defendants lay claim to lands located in both the States of New York and Vermont.

It is respectfully submitted that the judgment entered March 28, 1975 dismissing the complaint herein, denying the motion of the State for summary judgment and dismissing the application of applicants for intervention, be reversed.

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